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Attorneys for Non-Party Movants

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHEVRON CORP.,

Plaintiff,

v.

STEVEN DONZIGER, *et al.*

Defendants.

) Case No. 5:12-mc-80237 CRB (NC)

) **RESPONSE TO NOTICE OF PENDENCY**
) **OF OTHER ACTION OR PROCEEDING**

) Local Rule 3-13

) Place: Courtroom A, 15th Floor
) Hon. Nathanael Cousins

Pursuant to Local Rule 3-13, the Non-Party Movants submit this Response to Notice of Pendency of Other Action or Proceeding to give this Court additional information about the Notice filed by Chevron on July 1, 2013 of a recent development in the *Chevron Corp. v. Donziger*, Case No. 1:12-mc-00065 LAK/CFH (N.D.N.Y.) (the “New York Action”). As Chevron noted, in the New York Action, Judge Kaplan, sitting by designation, has denied a non-party motion to quash Chevron Corporation’s subpoena to Microsoft, a subpoena parallel to those at issue here, on the mistaken grounds that the non-party movants there were neither citizens nor residents of the United States. We file this Response to make three points.

First, as noted above, Judge Kaplan’s Opinion was based on an incorrect factual assertion by the Court, acting *sua sponte*, that the non-party movants in the New York Action were neither citizens nor residents of the United States. Based upon that assertion, the Court then held that the movants lacked standing to bring a First Amendment challenge to Chevron’s subpoena. Yet the assumption was incorrect and was made without giving movants the opportunity to address the issue. The undersigned intends to move for reconsideration in the New York Action in light of this factual error and if necessary, appeal. Additionally, Movants are unaware of any authority allowing a Court to assume a lack of citizenship or residency as part of the analysis of whether a subpoena issued in an American court meets the standards of the First Amendment.

Second, while Movants also know of no authority requiring them to demonstrate citizenship or residency status in order to challenge a subpoena issued by a U.S. court, to avoid any confusion the undersigned submit that several of the Non-Party Movants before this Court are citizens and residents of the United States and all have associational ties to this country. *See* Declaration of Nathan D. Cardozo, attached hereto as **Exhibit A**.

Finally, since Chevron has not previously challenged the Non-Party Movants’ standing to assert First Amendment rights on the basis of lack of citizenship or residency, that issue has not been addressed by the parties in this action either. Should this Court wish to address the issue of whether the First Amendment applies to subpoenas issued under U.S. law and enforced by U.S. courts, even though some of those directly affected by the subpoenas are not citizens or residents,

1 Non-Party Movants would be happy to submit additional briefing on that issue and request leave to
2 do so.

3
4 DATED: July 8, 2013

Respectfully submitted,

ELECTRONIC FRONTIER FOUNDATION

/s/ Nathan D. Cardozo

Nathan D. Cardozo

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Counsel For Non-Party Movants

Exhibit A

Exhibit A

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CHEVRON CORP.,

V.

Defendants.

1 I, Nathan D. Cardozo, of full age, certify, declare and state:

2 1. I am an attorney at law, duly licensed and admitted to practice in the State of
3 California. I am a Staff Attorney at the Electronic Frontier Foundation, a non-profit legal services
4 organization, counsel for the Non-Party Movants. The facts contained in the following affidavit
5 are known to me of my own personal knowledge and if called upon to testify, I could and would
6 competently do so.

7 2. During the course of this litigation, I have personally interacted with a number of
8 the Non-Party Movants, including in face-to-face meetings in San Francisco. Several of the Non-
9 Party Movants before this Court are citizens or residents of the United States. All of Non-Party
10 Movants have associational ties in the United States.

11
12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed on July 8, 2013 in San Francisco, California.

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15 /s/ Nathan D. Cardozo
16 NATHAN D. CARDOZO
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